

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: MIDAMERICAN ENERGY COMPANY	DOCKET NO. EPB-02-156
--	-----------------------

ORDER AFFIRMING PROPOSED DECISION AND ORDER

(Issued July 17, 2003)

On April 1, 2002, MidAmerican Energy Company (MidAmerican) filed its multi-year emissions plan and budget (EPB) for managing regulated emissions from its coal-fueled electric power generating facilities located in Iowa, pursuant to Iowa Code § 476.6(25).

Iowa Code § 476.6(25)"a"(3) provides that an investor-owned utility's EPB shall be considered in a contested case proceeding pursuant to Iowa Code chapter 17A. On April 26, 2002, the Utilities Board (Board) docketed the proceeding as a formal contested identified as Docket No. EPB-02-156.

On June 17, 2002, the Board issued an order assigning the docket to the administrative law judge (ALJ) to establish a procedural schedule, set a hearing date, and conduct the proceedings. Iowa Code § 476.6(25)"d" provides that the Board shall issue an order approving or rejecting an EPB within 180 days after the utility's filing is deemed complete. On October 10, 2002, an order was issued by the ALJ deeming the EPB complete, setting a procedural schedule, and establishing a

hearing date. The ALJ conducted the proceedings as scheduled and subsequently issued a proposed decision and order approving MidAmerican's EPB, as amended.

Subrule 199 IAC 7.8(2) requires that appeals from the proposed decision of the ALJ be filed with the Board within 15 days of the date the decision is issued. Appeals were timely filed by MidAmerican and the Consumer Advocate Division of the Department of Justice (Consumer Advocate). Timely responses to the appeals were also filed by MidAmerican and Consumer Advocate. Neither party requested opportunity for oral argument.

On April 17, 2003, the Board issued an order establishing the issues to be decided on appeal and setting a date for filing briefs. Briefs were filed by MidAmerican and Consumer Advocate.

Iowa Code § 476.15(3) provides that on appeal from the proposed decision of a presiding officer, the Board has all of the power that it would have had if it had initially conducted the hearing, except that it may limit the issues to be decided. The Board may then reverse or modify any finding of fact based upon the preponderance of evidence and may reverse or modify any conclusion of law that the Board finds is in error. In the April 17, 2003, order, the Board identified the issues to be decided on appeal. Those issues will be addressed below.

ISSUES FOR CONSIDERATION ON APPEAL

- 1. Whether approval of MidAmerican's proposed emissions budget also means approval of MidAmerican's expenditures.**

Consumer Advocate contends that there should be two separate determinations of reasonableness. Consumer Advocate asserts that the first determination is whether the EPB is reasonable, pursuant to Iowa Code § 476.6(25)"c," and that the second determination is whether the costs incurred in implementing the EPB were in accordance with the approved EPB, pursuant to Iowa Code § 476.6(25)"e." Consumer Advocate contends that the second determination should be made in a separate proceeding before the Board.

MidAmerican believes that the proposed decision, which asserts that there is only one determination of reasonableness to be made, reflects the only possible interpretation of the new statute, as it is consistent with the express statutory language and legislative intent.

In the proposed decision, the ALJ provides a thorough explanation of the interpretation of the reasonableness review established in Iowa Code §§ 476.6(25)"c" and "e." The ALJ asserts that the purpose of the statute is to "provide utilities with a determination that proposed expenditures are reasonable and in conformance with the statutory requirements before the amounts are actually spent." ("Proposed Decision and Order," p. 44.) The ALJ supports this assertion by explaining that § 476.6(25)"c" requires the Board to determine whether the proposed budget reasonably meets the statutory requirements and § 476.6(25)"e" requires that reasonable costs be included in retail rates. The ALJ concludes that the distinctions between §§ 476.6(25)"c" and "e" do not require that two separate determinations of reasonableness are required.

In terms of this proceeding, the ALJ has interpreted the statute as meaning that once MidAmerican's EPB has been determined to reasonably meet the statutory requirements and is approved, MidAmerican must prove to the Board, in a subsequent rate proceeding, that the costs it incurred in implementing the EPB were in accordance with the approved EPB. The ALJ concludes that if MidAmerican's expenditures are not in accordance with the approved EPB, MidAmerican may still seek after-the-fact approval of those expenditures in a subsequent rate proceeding, as with any non-EPB costs, which would then be subject to full reasonableness review.

The Board concurs with the ALJ's interpretation of Iowa Code §§ 476.6(25)"c" and "e" and finds that it is consistent with the statutory language and legislative intent. The language of the statute expresses only one reasonableness determination for emission control expenditures and that determination has been made in the EPB proceeding. The statute also expressly indicates that in a subsequent rate proceeding, a utility must document that the expenditures relating to the implementation of the EPB were actually incurred. The Board finds that § 476.6(25)"e" does not require a second, separate and superseding reasonableness determination as asserted by Consumer Advocate and affirms the proposed decision regarding this issue.

- 2. Whether the analysis regarding the tracker mechanism is rendered moot by the subsequent filing of MidAmerican's wind power stipulation and should be eliminated from the final order.**

MidAmerican contends that the ALJ's analysis regarding the tracker mechanism has been rendered moot as a result of the filing of its wind power stipulation, which has the effect of preventing MidAmerican from utilizing the tracker mechanism until at least the conclusion of the nine-year EPB period. MidAmerican asserts that because the issue is moot, the analysis of the issue should be removed from the final order, as it essentially becomes an advisory opinion on a moot issue.

Consumer Advocate disagrees with MidAmerican's opinion that the tracker mechanism issue is moot and points out that this issue was decided at the explicit request of MidAmerican.

The record shows that MidAmerican specifically requested that the issue regarding the tracker mechanism be resolved in this proceeding, despite the fact that the tracker would not be implemented until 2006, so as to provide utilities with certainty regarding the available cost-recovery mechanism when going forward with post-2005 environmental costs. (Tr. 139, 192-94; MidAmerican Initial Brief, p. 20; MidAmerican Reply Brief, pp. 6-7.) As this issue was determined at MidAmerican's request, the Board finds that the issue is not moot and the ALJ's conclusion of the matter should be reviewed. The Board notes that MidAmerican's wind power stipulation, which is at issue in Docket No. RPU-03-1, has not been ruled upon by the Board.

The ALJ determined that approval of a tracker mechanism to recover EPB costs would be inappropriate for two reasons. First, the statute does not provide for the use of a tracker mechanism. Second, the primary uses of tracker mechanisms in

the past have been for recovery of energy efficiency plan costs pursuant to Iowa Code § 476.6(19)"e" and for recovery of fuel and purchased power costs pursuant to Board rule 20.9 and allowance of a tracker for recovery of EPB costs would be inconsistent with prior uses of such trackers.

The Board concurs with the ALJ's denial of MidAmerican's use of a tracker mechanism for EPB activities and expenses. The ALJ's analysis supports the conclusion that a tracker mechanism for EPB activities and expenses is inappropriate and the preponderance of the evidence does not support a reversal or modification of the proposed decision regarding this issue.

ORDERING CLAUSE

IT IS THEREFORE ORDERED:

The proposed decision and order issued by the administrative law judge on March 19, 2003, is affirmed as provided in this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 17th day of July, 2003.